

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

UNITED STATES OF AMERICA

v.

JOSHUA HEATH ZUNIGA

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No. 5:06-MJ-055-C

GOVERNMENT'S RESPONSE TO DEFENDANT'S
MOTION TO ALTER CONDITIONS OF RELEASE

The United States of America, by and through the United States Attorney for the Northern District of Texas, now gives this response to the Motion to Alter Conditions of Release filed by the defendant herein, and would show the Court as follows:

The defendant has been charged by complaint with Enticement of a Child, in violation of Title 18, United States Code, § 2422(b). The charged offense is alleged to have occurred from in or about June, 2005, through in or about December, 2005. The affidavit in support of the complaint establishes that Defendant **Zuniga** enticed a 13 year-old girl, who was at the time an eighth grade student, to engage in sexual acts with him for which he could be prosecuted, including oral-genital and genital-genital sexual intercourse, indecency with a child, and production of child pornography. The affidavit establishes that **Zuniga** actually engaged in this sexually assaultive and criminal behavior with this minor.

Title 18, United States Code, § 3142 states:

Upon the appearance before a judicial officer of a person charged with an offense, the judicial officer shall issue an order that, pending trial, the person be-

- (1) released on personal recognizance or upon execution of an unsecured appearance bond, under subsection (b) of this section;
- (2) released on a condition or combination of conditions under subsection (c) of this section;

(3) temporarily detained to permit revocation of conditional release, deportation, or exclusion under subsection (d) of this section; or

(4) detained under subsection (e) of this section.

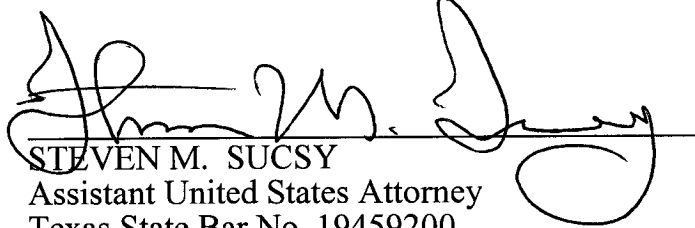
Title 18, United States Code, § (e)(3) states : Subject to rebuttal by the person, it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community if the judicial officer finds that there is probable cause to believe that the person committed an offense . . . involving a minor victim under section . . . 2422 of this title.

Because this court has found probable cause to believe that Defendant **Zuniga** has committed an offense involving a 13 year-old minor female, under 18 U.S.C. 2422, there is a presumption that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community. This provision of law is applicable, notwithstanding 18 U.S.C. 3142(j), that states: Presumption of Innocence.---Nothing in this section shall be construed as modifying or limiting the presumption of innocence.

Defendant **Zuniga** has been released on a personal recognizance bond, with conditions, even though a presumption justifying detention applied in this case. The United States did not move for detention. The conditions that this Court has applied are considerably more lenient than detention. **Zuniga** has failed to establish that he should be exempted from the condition that he participate in mental health counseling, including specialized sex offender counseling, or that it is necessary for him to use a computer in his employment. The government would propose that the Probation Officer make a determination if any requested changes in supervision would be appropriate, and that the Court then take any action it feels is appropriate, taking into consideration the recommendation and report of the Probation Officer.

Respectfully submitted,

RICHARD B. ROPER
UNITED STATES ATTORNEY

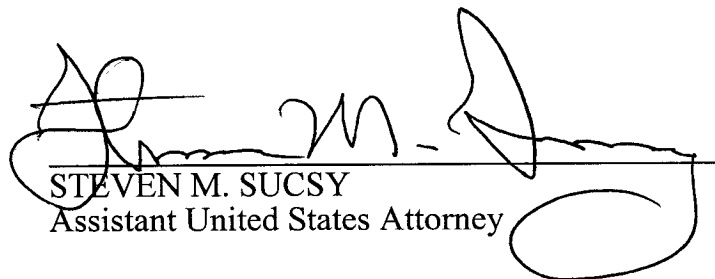


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CERTIFICATE OF SERVICE

I, Steven M. Sucsy, Assistant United States Attorney for the Northern District of Texas, do hereby certify that a true copy of the foregoing was served on Mark Eiglarsh, Attorney for the defendant, at 404 Washington Avenue, Suite 750, Miami Beach, FL, 33139, by United States Mail on this the 6th day of July, 2006.



STEVEN M. SUCSY
Assistant United States Attorney